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LS-95 773

ADO

31 July 1950

Legal Staff

Request for Opinion Regarding Implications of Certain Tests of Soviet Material.

1. In your memorandum of 24 July 1950, you have raised the question of possible commercial benefits which may be acquired by a private research contractor testing the material, and possible criticism that might be leveled at the Agency by his competitors.
2. Normally, the Government protects itself against a charge of this nature by compliance with the appropriate statutes which require public advertising except in certain cases. Among other exceptions, advertising is not required where the service rendered is provided by a university, college, or other educational institution, where it is impractical to secure competition, or where it is determined that the work should not be publicly disclosed. It is assumed that there is a definite security factor present and failure to advertise can be justified on this basis.
3. In making the tests, of course, it appears to us that there is no possible way in which we can deny the analyst some subjective improvement in his technical knowledge if the material or its fabrication possesses anything new to the art or at least unknown to the tester. Subject to this limitation, we can restrict any clear use in the commercial field that would be prejudicial to competitors. Provided the material has any quality which would require security control, it could be classified, with a clear understanding in the research or testing agreement that it was the property of the Government and use in the commercial field would be prohibited.
4. In analyzing the material, it is perfectly possible, and perhaps should be anticipated, that some patentable improvement may occur to the analyst. In this event, we should obtain title to the new invention, or retain a shop-right if it could be eventually exploited in commercial production, and we are not interested in permanent ownership. An interim restriction on commercial use could be achieved by placing the patent application under secrecy order in the Patent Office. In either case, the prime consideration is security.
5. In conclusion, where a security element is present, there is clear legal justification for negotiating the contract without advertising. If there is no security problem, there is no jeopardy to the Agency, and we should observe normal requirements for making the work publicly available on the lowest bid.

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